

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-068
	}	
	}	
Against the Republic of Iraq	}	Decision No. IRQ-II-044
	}	

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying her hostage-taking claim against the Republic of Iraq (“Iraq”). The Proposed Decision denied her claim because she was not a U.S. national at the time of her alleged hostage taking, as required by the September 2010 U.S.-Iraq settlement agreement¹ and by the State Department letter referring claims arising out of that agreement to this Commission.² On objection, Claimant requests that the Commission reconsider its decision in light of the hardship she experienced in Kuwait and Iraq. She further states that the Claims Settlement Agreement “contradicts American Law as it ignores the benefits for the Parents of American Minor Citizens who [were] held hostages as in [Public] Law 101-513.” After carefully considering Claimant’s request, along with all of her arguments and evidence, we again

¹ See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 (“Claims Settlement Agreement” or “Agreement”).

² *Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ¶ 3* (“2014 Referral” or “October 2014 Referral”).

deny Claimant's claim for the same reason stated in the Proposed Decision: Claimant was not a U.S. national at the time of the alleged hostage taking. We thus affirm the denial of this claim.

BACKGROUND

Claimant brought this claim against Iraq alleging that Iraq held her hostage in Kuwait and Iraq in August and September 1990. She alleged that she and her family (including, among others, her six-year-old U.S. citizen niece) were in Kuwait when Iraq invaded the country on August 2, 1990. Claimant further alleged that, shortly after the invasion, she and her family were effectively forced to go to Baghdad, Iraq, and, once there, were taken to a local hotel where they were placed under armed guard and not permitted to leave. She alleged that they were finally able to escape into Jordan by bus on September 13, 1990. Claimant sought compensation for her hostage experience under Category A of the State Department's letter to the Commission establishing this program ("2014 Referral"), which consists of "claims by U.S. nationals for hostage-taking³ by Iraq⁴ in violation of international law prior to October 7, 2004"³

The Commission denied the claim in a Proposed Decision entered on January 26, 2017 ("Proposed Decision").⁴ In so doing, the Commission noted that, under the 2014 Referral, claimants must have been "U.S. nationals" to be eligible for compensation. The Commission further explained that, in order to determine the applicable law, the Commission was required under its authorizing statute to "look first to 'the provisions of the applicable claims agreement'"⁵ Here, this meant that, in order to determine the precise

³ Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ¶ 3 ("2014 Referral" or "October 2014 Referral").

⁴ See Claim No. IRQ-II-068, Decision No. IRQ-II-044 (2017) (Proposed Decision).

⁵ *Id.* at 4 (citing 22 U.S.C. § 1623(a)(2) (2012)).

legal meaning of the term “U.S. national,” the Commission had to look to the U.S.-Iraq Claims Settlement Agreement,⁶ which defines “U.S. nationals” as ““natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement.””⁷ The Proposed Decision held that Claimant did not satisfy that definition because she was not a U.S. national at the time her claim arose, which was in 1990.

On February 15, 2017, Claimant filed a timely notice of objection. She did not, however, request an oral hearing. Claimant subsequently submitted a letter, dated May 11, 2017. That letter stated, among other things, that the Claims Settlement Agreement “contradicts American law” because it “ignores” the benefits available to the parents of U.S. minors who were held hostage in Iraq and Kuwait under Public Law No. 101-513.⁸ Claimant also noted that the U.S. State Department “acknowledged that we were hostages by giving us a letter[.]” Finally, Claimant requested that the Commission reconsider its denial of her claim in light of “the hardship [she and her family] went through”

As we explain below, we conclude that our determination in the Proposed Decision was correct: Claimant was not a U.S. national at the time of her alleged hostage-taking experience, and the Commission therefore lacks jurisdiction to adjudicate the merits of her claim under the 2014 Referral. Because we lack jurisdiction, we likewise have no authority to consider any hardship Claimant and her family may have gone through in deciding her claim. For this reason, her claim is denied.

⁶ *Id.*

⁷ Proposed Decision at 5 (quoting Claims Settlement Agreement, *supra*, art. I(2) (emphasis added)).

⁸ See Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, Pub. L. No. 101-513, 104 Stat. 1979, 2064 (1990) (heading to section 599C entitled “Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon”); see also 5 U.S.C. § 5561 note (2012) (“Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon”).

DISCUSSION

Because Claimant has not requested an oral hearing,⁹ her objection relies entirely on her May 11, 2017 letter. In that letter, Claimant asks the Commission to reconsider its Proposed Decision, which was based on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking. Claimant does not dispute, however, that she was not a U.S. national at the time of the alleged hostage taking and has not provided any evidence that she was a U.S. national at the time. In fact, she has not provided any new documentary evidence at all.

Claimant argues that the Commission failed to consider the benefits she claims were available to “Parents of American Minor Citizens” under Public Law No. 101-513, a 1990 statute that provided certain benefits to, among others, “United States nationals, or family members of United States nationals, who are in a hostage status in Iraq or Kuwait during the period beginning on August 2, 1990, and terminating on the date on which United States economic sanctions against Iraq are lifted”¹⁰ Claimant further suggests that the Commission should not have relied on the Claims Settlement Agreement because it “contradicts” U.S. law by not taking into account the benefits available to her under Public Law No. 101-513. Claimant also points to a letter from the U.S. Department of State in which the Department allegedly “acknowledged” that she and her family were hostages.¹¹

⁹ Under the Commission’s regulations, “[i]f an objection [to a Proposed Decision] has . . . been filed, but no hearing requested, the Commission may, after due consideration thereof: (1) Issue a Final Decision affirming or modifying its Proposed Decision, (2) Issue an Amended Proposed Decision, or (3) On its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or for the hearing of oral arguments.” 45 C.F.R. § 509.5(h) (2017).

¹⁰ § 599C(d)(4)(A), 104 Stat. at 2065.

¹¹ Although Claimant does not appear to have attached the letter, other members of her family, when submitting their own claims, provided an April 7, 1993 letter from the State Department stating that they “were in hostage status beginning August 2, 1990,” and noting that Claimant’s sister and brother-in-law received hostage benefits under Public Law No. 101-513. This letter does not, however, reference Claimant.

The argument Claimant appears to be making about Public Law No. 101-513 is incorrect. Public Law No. 101-513 does not affect this Commission’s jurisdiction in any way. Rather, as we explained in the Proposed Decision, the Commission’s jurisdiction in this program comes from the Secretary of State, who has statutory authority under the International Claims Settlement Act of 1949 (“ICSA”) to refer “a category of claims against a foreign government” to this Commission.¹² The Secretary delegated that authority to the State Department’s Legal Adviser, who then referred the category of claims at issue here to the Commission via the 2014 Referral. One of the threshold requirements for hostage-taking claims in this program is that the claim be brought by a “U.S. national.” As we noted in the Proposed Decision, the term “U.S. national” has a specific legal meaning that the Commission is bound to apply in deciding claims under the 2014 Referral. The ICSA requires the Commission first to “apply the ... provisions of the applicable claims agreement”¹³ Here, the “applicable claims agreement” is the U.S.-Iraq Claims Settlement Agreement. That agreement states that “[r]eference to ‘U.S. nationals’ shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement.”¹⁴ Thus, applying the applicable provisions of the ICSA, the Commission’s authorizing statute, the Commission must interpret the term “U.S. national” to mean a person who was a U.S. national at the time the claim arose. In this case, the claim arose in August 1990. It is undisputed that Claimant was not a U.S. national at that time. She therefore does not meet the jurisdictional requirement under Category A of the 2014 Referral that the claim be brought by a U.S. national.

¹² See 22 U.S.C. § 1623(a)(1)(C) (2012).

¹³ *Id.* § 1623(a)(2).

¹⁴ Claims Settlement Agreement, art. I(2) (emphasis added).

Public Law No. 101-513 is not relevant to the Commission's jurisdiction or the requirement that a claimant have been a U.S. national at the time the claim arose. The beneficiaries of Public Law No. 101-513 included "family members of United States nationals" who were not themselves "United States nationals." Therefore, even though a "family member[] of [a] United States national[]" may have been eligible for benefits under Public Law No. 101-513, such a family member would not be eligible for compensation in the Commission's Iraq Claims Program unless he or she were also a "United States national" within the meaning of the Claims Settlement Agreement. In short, the relevant U.S. law is the Commission's own authorizing statute, the ICSEA, which requires that a claimant in this program be a "United States national." Nothing in the Claims Settlement Agreement "contradict[s]" Public Law No. 101-513. The Claims Settlement Agreement defines "U.S. nationals," while Public Law No. 101-513, in contrast, provides benefits for a different group of individuals, including "family members of United States nationals." The fact that Public Law No. 101-513 granted benefits to family members of U.S. nationals has no bearing on *this* claims program, which is based on the 2014 Referral, which is in turn based on the Claims Settlement Agreement.

Finally, Claimant also appears to assert that the Commission should reconsider its decision because she experienced hardship during her ordeal in Kuwait and Iraq in 1990. Whatever hardship Claimant and her family may have faced during the Iraqi invasion and occupation of Kuwait, this does not give the Commission legal authority to decide the claim. Because the relevant law requires that Claimant have been a U.S. national at the time of the alleged hostage-taking, the degree of hardship Claimant suffered plays no role in the Commission's decision: The decision is based solely on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking.

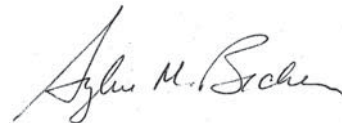
CONCLUSION

In sum, while we recognize the considerable suffering and hardship endured by Claimant during the Iraqi invasion and occupation of Kuwait, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, May 14, 2018
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner